



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No. 211101-0222]

RIN 0648-BK63

**Fisheries of the Atlantic; Atlantic Migratory Group Cobia;
Amendment 1 and Addendum 1 to Amendment 1**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations related to Amendment 1, and Addendum 1 to Amendment 1, to the Interstate Fishery Management Plan (FMP) for Atlantic Migratory Group Cobia (Interstate FMP), as prepared and submitted by the Atlantic States Marine Fisheries Commission (ASMFC). As described in Amendment 1 and Addendum 1, this final rule revises the commercial quota and the process for a commercial quota closure for Atlantic migratory group cobia (Atlantic cobia) in Federal waters. The purpose of this final rule is to increase the commercial quota as a result of the most recent stock assessment and to allow the ASMFC to monitor commercial landings for any needed commercial in-season closure while ensuring the long-term sustainability of the Atlantic cobia stock.

DATES: This final rule is effective *[insert date of*

publication in the *FEDERAL REGISTER*].

ADDRESSES: Electronic copies of Amendment 1 and Addendum 1 may be obtained from the ASMFC website at http://www.asmfc.org/uploads/file/6009e765AtlanticCobia_AddendumI_Oct2020.pdf.

FOR FURTHER INFORMATION CONTACT: Frank Helies, telephone: 727-824-5305, or email: Frank.Helies@noaa.gov.

SUPPLEMENTARY INFORMATION: The fishery for Atlantic cobia in Federal waters is managed under the authority of the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act) by regulations at 50 CFR part 697. Separate migratory groups of cobia are managed in the Gulf of Mexico and Atlantic. Atlantic cobia is managed from Georgia through New York. The southern management boundary for Atlantic cobia is a line that extends due east of the Florida and Georgia state border at 30°42'45.6" N latitude. The northern management boundary for Atlantic cobia is the jurisdictional boundary between the Mid-Atlantic and New England Fishery Management Councils, as specified in 50 CFR 600.105(a).

The final rule to implement Amendment 31 to the FMP for Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region and Amendment 1 to the Interstate FMP removed Atlantic cobia from Federal management under the Magnuson-Stevens Fishery Conservation and Management Act and transitioned the management of

Atlantic cobia in Federal waters to the ASMFC under the Atlantic Coastal Act (84 FR 4733, February 19, 2019). All weights described in this rule are in round and eviscerated weight, combined.

On September 2, 2021, NMFS published a proposed rule for Amendment 1 and Addendum 1 and requested public comment (86 FR 49284). The proposed rule and Amendment 1 and Addendum 1 outline the rationale for the actions contained in this final rule. A summary of the management measures described in Amendment 1 and Addendum 1 and implemented by this final rule is described below.

Background

The ASMFC approved Amendment 1 to the Interstate FMP in 2019 and Addendum 1 to Amendment 1 in 2020. Amendment 1 and Addendum 1 provide for an increase in the commercial quota and a revision to the process for a commercial in-season closure. This final rule serves to implement certain measures in Federal waters contained within Amendment 1 and Addendum 1.

In 2020, a new Southeast Data, Assessment, and Review (SEDAR) assessment was completed for Atlantic cobia (SEDAR 58). SEDAR 58 indicated that Atlantic cobia was not overfished or undergoing overfishing, and that the allowable harvest could be increased based on updated commercial and recreational catch estimates. Based on the results of the SEDAR 58 and new stock projections from

February 2020, in October of 2020, the ASFMC approved an increase to the Atlantic cobia annual total harvest quota of 80,112 fish for the 2020-2022 fishing seasons. Through Amendment 1 and Addendum 1, the ASMFC also adjusted the commercial and recreational allocation percentages and changed the methodology used to close the commercial sector when the quota is reached.

The ASMFC revised the total Atlantic cobia quota sector allocations from 8 percent to 4 percent for the commercial harvest and from 92 percent to 96 percent for the recreational harvest, to account for changes in the recreational catch estimates from the Marine Recreational Information Program Fishing Effort Survey. When defining these allocations in terms of numbers of fish, the updated allocations would result in a commercial quota of 3,204 fish and a recreational quota of 76,908 fish. As described in Amendment 1 and Addendum 1, using an average commercial weight of 22.82 lb (10.35 kg), this is equivalent to a commercial quota of 73,116 lb (33,165 kg) in round and gutted weight, combined. In addition, the ASMFC would closely monitor commercial landings to ensure the commercial quota is not exceeded.

Management Measures Contained in this Final Rule

This final rule modifies the commercial quota and the process for closing the commercial sector in Federal waters when the quota is reached.

Commercial Quota

The current Atlantic cobia commercial quota of 50,000 lb (22,680 kg) was established through the final rule to implement Amendment 1 to the Interstate FMP (84 FR 4733, February 19, 2019). As a result of SEDAR 58, this final rule increases the commercial quota to 73,116 lb (33,165 kg). The ASMFC is responsible for monitoring of commercial landings during the fishing year.

Process to Close the Commercial Sector

The current process requires an in-season closure in Federal waters during the fishing year for the commercial sector when the quota is reached or projected to be reached. When the NMFS Science and Research Director estimates that the sum of commercial landings (cobia that are sold) reaches or is projected to reach the commercial quota, then NMFS will prohibit the sale and purchase of cobia for the remainder of that fishing year (a commercial closure). For example, in 2020, NMFS projected that commercial landings would reach the commercial quota on November 6, and therefore, NMFS closed the commercial sector on November 6, 2020, through December 31, 2020 (85 FR 70085; November 4, 2020).

This final rule retains the possibility of an in-season closure if commercial landings reach the quota. This final rule also changes the closure language in the current regulations regarding in-season quota monitoring so that

commercial landings will be monitored by the ASMFC and not by NMFS. Currently, NMFS monitors the commercial quota and closes the commercial sector when the quota is met or projected to be met. The new process transfers quota monitoring responsibility to the ASMFC. Because Atlantic cobia are primarily landed in state waters, the ASFMC determined that they are better suited to monitor cobia landings and ensure the risk of early closures is minimized. During the fishing year, if the ASMFC estimates that the sum of commercial landings (cobia that are sold), reaches or is projected to reach the commercial quota, then the ASMFC would notify NMFS of the need for a commercial closure of the exclusive economic zone (EEZ) and NMFS would close the commercial sector. During any such closure, the commercial harvest, sale, trade, barter, or purchase of Atlantic cobia would be prohibited for the remainder of that fishing year. When considering this increase to the commercial quota, and when compared to cobia landings in previous fishing years, NMFS estimates that a commercial in-season closure is still possible as a result of the commercial quota being reached, but expects that any such closure would occur later in the fishing year than occurred under the previous commercial quota.

NMFS may consider additional commercial and recreational regulatory changes to be implemented through rulemaking for Atlantic cobia as described in Amendment 1

and Addendum 1 in future rulemaking.

Comments and Responses

NMFS received nine comments from individuals and a fishery management organization during the public comment period on the proposed rule. NMFS acknowledges the comments in favor of the actions in the proposed rule and agrees with them. Comments received that were outside the scope of the proposed rule are not responded to in this final rule. Comments that opposed the actions contained in the proposed rule are summarized below, along with NMFS' responses.

Comment 1: The commercial quota should not be increased. The Atlantic cobia stock is under high fishing pressure and increasing the commercial quota would hurt the stock's recovery progress.

Response: NMFS disagrees that the commercial quota should not be increased. In 2020, a new SEDAR assessment was completed for Atlantic cobia. The stock assessment indicated that Atlantic cobia was not overfished or undergoing overfishing, and that the allowable harvest could be increased based on updated commercial and recreational catch estimates. In response to the stock assessment, the ASFMC developed Addendum 1 to Amendment 1 and the Interstate FMP. Addendum 1 increased the Atlantic cobia annual total and sector harvest quotas. NMFS does not expect increased commercial catch levels to result in negative impacts to the Atlantic cobia stock.

Comment 2: The commercial quota should not be increased. Commercial harvest limits are constantly increasing while the recreational sector harvest limits keep getting reduced.

Response: NMFS disagrees that the commercial quota shouldn't be increased when compared to recreational harvest. As a result of the latest stock assessment, Addendum 1 increased the harvest quotas for both the commercial and recreational sectors. Addendum 1 also changed sector allocations from 8 percent commercial to 4 percent commercial and from 92 percent recreational to 96 percent recreational. The Atlantic cobia recreational sector continues to be allocated the majority of the available total stock quota. The ASMFC made the change to the sector allocations to account for the revised recreational catch estimates from the Marine Recreational Information Program Fishing Effort Survey. As a result of the updated stock assessment and changes to the sector allocations, the recreational quota increased from 22,142 fish to 76,908 fish and the commercial quota increased from 2,191 fish to 3,204 fish. Therefore the commercial and recreational quota increases are based on the results of the recent assessment and the revised sector allocations as determined by the ASMFC.

Comment 3: In response to the increased Atlantic cobia stock size, the for-hire charter sector should be allowed

to keep smaller than 36 inch (91.4 cm) fish or allow 2 fish per person, instead of increasing the commercial quota.

Response: The actions contained in this final rule for the commercial quota increase and revising the process for closing the commercial sector in Federal waters are taken from the request of the ASMFC to NMFS and contained in Amendment 1 and Addendum 1. NMFS acknowledges that within Amendment 1 and Addendum 1, the ASMFC has proposed additional recreational management measures for Federal waters that include size limits and bag and vessel limits based on the existing requirements for each state represented by the ASMFC. NMFS is evaluating those additional management measures and may propose them in a future rulemaking, but at this time changes to size limits and bag and vessel limits are outside the scope of this final rule.

Classification

The NMFS Assistant Administrator has determined that this final rule is consistent with Amendment 1 and Addendum 1, the Interstate FMP, the Atlantic Coastal Act, the applicable provisions of the Magnuson-Stevens Act, and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the

Small Business Administration during the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published in the proposed rule and is not repeated here. No significant issues were raised by public comments related to the economic impacts on small entities, and no changes to this final rule were made in response to public comments. As a result, a final regulatory flexibility analysis was not required and none was prepared.

NMFS finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in the effective date for this final rule because this rule relieves a restriction by increasing the commercial quota for Atlantic cobia. In addition, delaying implementation of the quota increase is contrary to the public interest. As described in Amendment 1 and Addendum 1, the ASMFC increased the commercial quota based upon the results of the latest stock assessment and is intended to be used in combination with other measures to achieve optimum yield for the stock. Not waiving the 30-day delay in the date of effectiveness of this final rule would result in reduced opportunities for fishermen to harvest the quota and achieve optimum yield this year, and could also result in an early closure of the commercial fishery if the quota is not increased. A closure in 2021 that occurred as a result of the current quota being met, prior

to the increased quota being implemented, would not be consistent with the intent of the ASMFC and Amendment 1 and Addendum 1, and is contrary to the public interest.

Therefore, a delay in the date of effectiveness of this final rule would diminish the social and economic benefits this rule provides for Atlantic cobia fishermen.

List of Subjects in 50 CFR Part 697

Atlantic, Cobia, Fisheries, Fishing, South Atlantic.

Dated: November 1, 2021.

Carrie Robinson,

Acting Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 697 is amended as follows:

PART 697-ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

1. The authority citation for part 697 continues to read as follows:

Authority: 16 U.S.C. 5101 et seq.

2. In § 697.28, revise paragraph (f)(1) to read as

follows:

§ 697.28 Atlantic migratory group cobia.

* * * * *

(f) * * *

(1) *Commercial quota.* The following quota applies to persons who fish for cobia for commercial purposes--73,116 lb (33,165 kg). If the sum of the cobia landings that are sold, as estimated by the ASMFC, reach or are projected to reach the quota specified in this paragraph (f)(1), then the ASMFC will notify NMFS of the need for a commercial closure of the EEZ. NMFS will then subsequently file a notification with the Office of the Federal Register to prohibit (for commercial purposes) the harvest, sale, trade, barter, or purchase of cobia for the remainder of the fishing year.

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